(1)

FILED

031664 MAY 10 2004

No.

IN THE

Supreme Court of the United States

BARRY J. STERN, *Petitioner*,
v.
ARNOLD H. ORLICK, *Respondent*

On Petition For A Writ Of Certiorari To The Supreme Court Of Florida

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does one escape liability for defamation by putting the libel behind a prefix such as "I have been told that. . ." or "It is rumoured that . . .", and then asserting that it was true that one had been told or that it was in fact being rumored?

2. Does Malice as defined by this Court for defamation apply to State Courts?

3. Does the use of Mind Altering Drugs as prescribed by a licensed Physician convert Emotional Damages to Bodily Harm?

PARTIES TO THE PROCEEDING

The parties to this proceeding are:

1. Petitioner Barry J. Stern is a citizen of the United States and a resident of Indiana.

2. Respondent Arnold H. Orlick is a citizen of the United States and a resident of Florida.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Barry J. Stern respectfully petitions for a writ of certiorari to review the judgment of the Trial Judge, The Second District Court of Appeals, and the Florida Supreme Court in this case.

OPINIONS BELOW

The decision of the Second District Court of Appeal was affirmed per Curium without Opinion.

The decision of the Florida Supreme Court was that they do not have Jurisdiction.

JURISDICTION

The decision of the Florida Supreme Court was entered on February 16, 2004. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves provisions of the Seventh and Fourteenth Amendments to the United States Constitution:

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law." U.S. Const. amendment VII.

"[N]or shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amendment XIV.

STATEMENT OF CASE AND FACTS

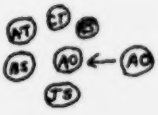
1. That on March 24, 2002 Plaintiff obtained a signed statement from Christina Trevino, a non-family member, testifying to the events that transpired at the Grave Site Services for Reva Rudy Stern, Plaintiff's Mother, on March 19, 2002 at 1:45 PM, attached as follows.

Page 1 of 4 pages:

Grave Site Service for Reva Rudy Stern

Location: Chapel Hill Memorial Park, Largo, FL
Date: Tuesday, March 19, 2002 at 1:45 p.m.

Positions of Parties:



Parking

Grave Site of Reva Stern

BS = Barry Stern
JS = Judy Stern
AT = Alia Tsang
CT = Christina Trevino
RS = Rachael Stern
AO = Arnold Orlick

AO wearing sunglasses approached and entered group.

I affirm the information on this sheet of paper.

Grave Site Service for Reva Rudy Stern

Location: Chapel Hill Memorial Park, Largo, FL
Date: Tuesday, March 19, 2002 at 1:45 p.m.

Opening interaction between Arnold Orlick and Barry Stern:

1. Arnold Orlick: Extended hand to Barry Stern and
2. said "your mom wanted us to shake hands."
3. Barry Stern: Backed up a little and declined.
4. Arnold Orlick: said "Even though your mother
5. requested it."
6. Barry Stern: still would not shake hands and didn't
7. say anything.

I affirm the information on this sheet of paper.

refer to time - 12:30 pm
and Barry's response was
"I will not shake hands of you"

[signature]
24 Mar '02

Grave Site Service for Reva Rudy Stern

Location: Chapel Hill Memorial Park, Largo, FL
Date: Tuesday, March 19, 2002 at 1:15 pm.

Arnold Orlick's Main Statement:

1. "Your mother told me to tell you
2. she forgives you for saying
3. you would piss on her grave."

I affirm the information on this sheet of paper.

[redacted]
24 March '02

I wouldn't actually call this his main
~~statement, just to upset~~
but another of which
~~he~~ I said his mother
~~but after he was saying~~ at.

[redacted]
24 March '02

Grave Site Service for Rena Rudy Stern.

Location: Chapel Hill Memorial Park, Largo, FL
Date: Tuesday, March 19, 2002 at 1:45 pm

Concluding Remarks:

1. Barry Stern: "That's not true." "You have
2. just defamed me."
3. Arnold Orlick: "I was just trying to be a
4. gentleman."
5. Barry Stern: "You're no gentleman."

No more was said by any party and
Arnold Orlick left the group.

I affirm the information on this sheet of paper.
is "That not true, I never ~~said that~~" "You have just insulted
me in front of these people (myself & his)."
35 ° true
sic true

24 Jan '02

2. That on July 3, 2002, Plaintiff filed a complaint, Record (Vol. I, Page 1-8), in Pinellas Circuit Court Case No. 02-5280-CI-20 against Arnold H. Orlick, Plaintiff's brother-in-law, for Defamation and Intentional Infliction of Emotional Distress. The Complaint alleged that Arnold H. Orlick stated to Plaintiff in the presence of family members and non-family members on March 19, 2002 at 1:45 pm, at the gravesite services of his Mother:

> ***"Your mother told me to tell you she forgives you for saying you would piss on her grave"***

3. That said complaint alleges that said statement was known by Orlick at the time he made said statement to be false; and was published and communicated by Orlick with malice aforethought, at a time and place to inflict maximum damage, with ill will, with the intent of defaming Stern, and causing great injury to the reputation of Stern and was timed to give Stern the maximum possible emotional distress in his hour of grief over his Mother's death.

4. That on August 23, 2002 and November 25, 2002 Plaintiff submitted Affidavits, Record (Vol. I, Page 20-21, Page 55-57) in which he states that as a direct result of this incident he has been admitted as a patient of Dr. Basheer Ahmed, M.D. and Dr. Toner Overlay, M.D.. Enclosed herein is a letter from Dr. Basheer Ahmed, M.D. as follows. He was diagnosed with Adjustment Disorder with Mixed Emotional Features and is presently on 50mg of Zoloft/day with Group Therapy for two days/week. In this Affidavit he states he never made the statement to his mother, that no one ever contacted him regarding the statement, that he had a close and loving relationship with his mother, and that he does not believe that his Mother made such a statement to anyone in his family.

St.Vincent
Stress Centers

2/26/03

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Psychiatric Center
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Creativity
Courageous transformation
Dedication
Affirming the hope and joy of our ministry
1534Z 0800

To whom it may concern

Re: Barry Stern.

Mr Stern has been under my supervision since 7/31/02. He suffers from Major depressive disorder (DSM code 296.3). He attended the IOP (intensive out pt program) at the St Vincents Stress center. He is on medication management and is progressing well ē the treatment plan. It is noted that patients current emotional/Psychiatric condition was evoked / precipitated by the statement of ~~Mr~~ Arnold Orlick at his mothers funeral. As per Mr Stern the statement was " Your mother told me to tell you, she forgives you for saying, you would piss on her grave". Pt developed homicidal ideation towards Mr Orlick. He is currently in treatment and is progressing well. He will continue medication management and Anger management. He continues to expreed anger towards him but denies any homicidal ideas/intent. You may contact me for further questions or clarifications.

BASHEER AHMED MD.

A member of Central Indiana Health System. A values-based alliance of local healthcare providers.

BEST AVAILABLE COPY

5. That on August 23, 2002 Judy C. Stern submitted an Affidavit, Record (Vol. I, Page 18-19), in which she states that she was standing next to Barry J. Stern at the gravesite services of his mother on March 19, 2002 at 1:45 pm at Chapel Hill Memorial Park, Largo, Florida and she heard Arnold H. Orlick state to Barry J. Stern:

> ***"Your mother told me to tell you she forgives you for saying you would piss on her grave"***

6. That on September 23, 2002 Defendant submitted a Motion for Summary Judgment, Record (Vol. I, Page 22-28), based on the argument that this statement does not represent a sufficiently outrageous statement to support a claim for Intentional Infliction of Emotional Distress and that a Defamatory Statement is not actionable, as long as the statement is true, and Plaintiff cannot prove the statement is not true because his mother is deceased. That in any event, his cause of action is with his mother and not Orlick.

7. That attached to this Motion for Summary Judgment was an Affidavit, Record (Vol. I, Page 29-32, Page 41-45), from Defendant which stated that he had a conversation with the deceased in **1994** in which the deceased stated that Plaintiff told deceased that he would "piss on her grave".

8. That on October 10, 2002 Plaintiff filed a Motion to Strike the Affidavits of Defendant, Record (Vol. I, Page 36-37), on the basis they were entirely hearsay statements in violation of Fla. R. Civ. P. 1.510.

9. On November 21, 2003 the Deposition of Defendant, Arnold H. Orlick, Record (Vol. I, Page 81, Line 2-12), was taken in which Defendant stated:

Q Did you discuss this statement with Mrs. Orlick?

A No, I don't recall discussing it. It was such profanity in my mind, I'm embarrassed even to use those words. That's all I can say about that.

Q And so you didn't discuss it with anyone else then either?

A No.

Q And you never confronted Barry about it?

A Why should I? I've spent about 45 minutes in 46 years with Barry Stern. So you can see Barry Stern isn't on my mind, period.

10. That on November 26, 2002 a Hearing on Defendant's Motion for Summary Judgment was conducted By Judge W. Douglas Baird, in which Judge Baird made the following comments:

Record (Vol. II, Page 167, Line 15-18):

THE COURT: Look. I am perfectly willing to accept and I'm sure that Dr. Orlick is, too, that he never made that statement. Okay. Let's just assume that it never happened. You want me to sign an order?

Record (Vol. II, Page 176, Line 22-24

THE COURT: . . . .If there is no evidence that the statement made by Dr. Orlick was false, it can't be defamation.

Record (Vol. II, Page 177, Line 17-25):

THE COURT: It's not difficult. It's impossible. The only way you would be able to prove she never said that would be to have someone who was with her for her entire relationship and know every word she spoke or who was present every time

that she spoke with Dr. Orlick. I mean, it would be impossible. It would be impossible. I just don't see it. ***I'm going to grant the summary judgment. I really think this has gone far enough.***

Record (Vol. II, Page 178, Line 1-9):

THE COURT: Yes. Yes. As to the intentional infliction count, ***I don't think this rises to the level of intentional infliction.*** *It's not so outrageous and shocking as to create a cause for intentional infliction, so I'll grant it as to that too.*

11. That on December 6, 2002 Plaintiff filed a Motion for Rehearing in which he states, Record (Vol. I, Page 152):

9. Plaintiff argued that the Defendant had not met his burden of proof for the necessary elements of his affirmative defense because Defendant had not provided any evidence of "good motive," as required under Article I, Section 4 of the Florida Constitution.

12. That on January 15, 2003 The Court entered an order denying Motion for Rehearing, Record (Vol. II, Page 189-190).

13. That on January 31, 2003 Plaintiff files a Notice of Appeal, Record (Vol. II, Page 226-229).

14. That on April 1, 2003 Appellant files a brief in Cause No. 2D03-585 which he states on Page 7:

In Williams v. City of Minneola, 575 So. 2d 683 (Fla. 5th DCA 1991), the court analyzed a case of outrageous and reckless conduct. Although the case is

related to the improper behavior toward dead bodies, the court specifically noted that:

...We emphasize that our society...shows a particular solicitude for the emotional vulnerability of survivors ...of a loved one and the special deference paid by courts to family feelings where rights involving dead bodies are concerned is central to our decision. One obvious reason is that the bereaved are already suffering psychic trauma because of the loss of the loved one and are especially sensitized to any disrespect or indignity directed at the deceased's body or representation of it. 575 So. 2d at 692.

15. That on April 1, 2003 Appellant files a brief in which he states on Page 13 and 14:

The Florida Appeals Court states in Korbin v. Berlin, 177 So. 2d 551, (Fla. 3th DCA 1965):

[11] *This appeal is from an order dismissing an amended complaint in an action brought by a six year old girl through her guardian and next friend. It was alleged in the amended complaint that at a certain time and place the defendant "Willfully and maliciously approached the said plaintiff * * * and made the following statement to her: 'Do you know that your mother took a man away from his wife? Do you know God is going to punish them? Do you know that a man is sleeping in your mother's room?' She then again repeated, 'God will punish them.'" It was alleged the statements were knowingly false, "made maliciously, willfully and with utter disregard to the feelings of the six-year-old Plaintiff," and it was further alleged that the statements were made "for the purpose of causing the plaintiff-child undue*

emotional stress, mental pain and anguish." Resultant injuries were alleged, and damages were sought.

[22] *Therefore, the determinative question here is whether what was said to the child was intended or reasonably calculated to cause the child "severe emotional distress." The alleged statements and the manner and circumstances under which they were communicated to the child leave little room to doubt they were made with a purpose and intent to shame her, and to shock the sensibilities of this child of tender years. Relating, as they did, to the child's mother, the content and import of the statements were such that it can not be said as a matter of law that this alleged deliberately harmful act was not one "calculated to cause 'severe emotional distress' to a person [child] of ordinary sensibilities." See Slocum v. Food Fair Stores of Florida, supra.*

[23] *Accordingly, the order dismissing the amended complaint is reversed and the cause is remanded for further proceedings.*

16. That an April 1, 2003 Appellant files a brief in which he states on Page 16:

In any event, the legal premise upon which the modern rule of actionable liability rests is, that a person who repeats a slander or libel is presumed by his reiteration of it, ***to indorse it and make it his own.*** *Layne v. Tribune Company, 146 So. 234 (Fla. 1933).*

17. That on April 1, 2003 Appellant files a brief in which he states on Page 17-18:

Even if the Jury determined that Plaintiff had made the statement to his Mother, or could not determine this issue, Florida Law requires that Defendant still

publish the statement with good Motive. Art. I, § IV, Fla. Const.

Publishing a Defamatory Statement with reckless disregard for whether it is True or False is defined by the U.S. Supreme Court as Malice.

Malice means that it was published either knowing that it was false or with reckless disregard as to whether is was true or false. New York Times Co. v. Sullivan, 376 U.S. 254, 84 S. Ct. 710, 11 L.ed. 2d 686.

18. That on May 27, 2003 Appellant files a reply brief in which he states on Page 5:

In Lashley v. Bowman, 561 So.2d 406 (Fla. 5th DCA 1990) the Appellate court addresses the issues of bodily harm and the inference of extortion:

[20] We also believe the evidence is sufficient to defeat a summary judgment on the claim for intentional infliction of emotional distress. Intentional infliction of emotional distress is defined in Restatement (Second) of Torts § 46(1) as follows:

[21] 46. Outrageous Conduct Causing Severe Emotional Distress.

[22] (1) One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, ***and if bodily harm to the other results from it, for such bodily harm.***

19. That on May 27, 2003 Appellant files a reply brief in which he states on Page 10:

Axelrod v. Califano, 357 So. 2d 1048(Fla. 1st DCA 1978) the Appellate Court stated:

*[23] "1. "Such judgments should be sparingly granted * * *. To sum it all up, if there are issues of fact and the slightest doubt remains, a summary judgment cannot be granted.' Williams v. City of Lake City, 62 So.2d 732 (Fla.1953). In the later case of Manning v. Clark, 71 So.2d 508 (Fla.1954), the Florida Supreme Court thus explained the meaning of the words "slightest doubt' in its Williams opinion: '* * * when a judge encounters doubt as to the existence or nonexistence of a genuine issue of fact the doubt should be resolved against the movant.'*

20. That on May 27, 2003 Appellant files a reply brief in which he states on Page 10:

Even in Jurisdictions outside the United States this principle is upheld as in Lord Devlin in Lewis v. Daily Telegraph Ltd., [1963] 2 All E.R. 151 at 173:

This answer is no. One cannot escape liability for defamation by putting the libel behind a prefix such as "I have been told that ..." or "It is rumoured that ...", and then asserting that it was true that one had been told or that it was in fact being rumoured.... For the purpose of the law of libel, the hearsay statement is the same as a direct statement.

21. That on May 27, 2003 Appellant files a reply brief in which he states on Page 12-13:

- - - - - in Lipsig v. Ramlawi, 760 So.2d 170, (Fla.App. 03/29/2000) the Florida Court of Appeals stated:

*[86] Moreover, **under Florida law**, truth is only a defense to defamation when the truth has been coupled **with good motive**. See Axelrod v. Califano, 357 So. 2d 1048, 1050 (Fla. 1st DCA 1978)(holding that "the truth of the publication is a good defense, assuming that it was made with good motives."). The law is clear that both truth and good motives are issues for the jury. See, e.g., Glickman, 454 So. 2d at 613; Drennen, 328 So. 2d at 55.*

22. That on September 5, 2003, the Second District Court of Appeals affirmed the Trial Court's Decision **without opinion** in Cause No. 2D03-585.

23. That on September 16, 2003, Appellant filed a Motion for Rehearing, and/or Certification and expressly requested the District Court of Appeal for a written opinion pursuant to Rule 9.330.

24. That on October 10, 2003, the Second District Court of Appeals denied the Motion for Rehearing, and/or Certification or Written Opinion.

25. That on November 10, 2003, Appellant files Notice of Appeal to the Supreme Court of Florida on Basis that the Trial Court and Affirmation by the Appeals Court has rendered the requirement of good motive of Article I, Sec. IV of the Florida Constitution invalid.

26. That on December 3, 2003, Case No. SC03-2067, was dismissed with the following statement:

It appearing to the Court that the Second District Court did not declare invalid a state statue or a provision of the State Constitution, and that, therefore this Court is without jurisdiction, this appeal is hereby dismissed subject to reinstatement if jurisdiction is established on proper motion filed

within fifteen (15) days from the date of this order. See Art. V, §3(b)(1), Fla. Const.

27 That on December 17, 2003 a Motion to Reinstate Jurisdiction was filed.

28. That on February 16, 2004 Petitioner's Motion to Reinstate Jurisdiction is denied.

REASONS FOR GRANTING THE PETITION

I. Review Is Warranted In This Case Because Liability For Repeating A Defamation Should be Established By The US Supreme Court For All Of The States.

Few issues could be more important than those presented in this case. At stake is the lawful resolution of what is meant by free speech. As this Court has often recognized, the American public's right to free speech is one of the most sacred protected by our Constitution: "No right is more precious in a free country than that of free speech. Other rights, even the most basic, are illusory if the right to free speech is undermined. In counter balance to this right is the right of an individual to protect his good name which has been expressed most elegantly by this Court in Gertz v. Welch, 418 U.S. 323, 94 S. Ct. 2997, 41 L. Ed. 2d 789 1974:

> *The legitimate state interest underlying the law of libel is the compensation of individuals for the harm inflicted on them by defamatory falsehood. We would not lightly require the State to abandon this purpose, for, as MR. JUSTICE STEWART has reminded us, the individual's right to the protection of his own good name "reflects no more than our basic concept of the essential dignity and worth of every human being -- a concept at the root of any decent system of ordered liberty. The protection of private personality, like the protection of life itself, is left*

primarily to the individual States under the Ninth and Tenth Amendments. But this does not mean that the right is entitled to any less recognition by this Court as a basic of our constitutional system." Rosenblatt v. Baer, 383 U.S. 75, 92 (1966) (concurring opinion).

The Florida Supreme Court's and The Florida Second District Court of Appeal's failure to address this most basic issue poses a clear and present danger to that right, and should be corrected forthwith to ensure that our Nation continues to be governed by the rule of law.

The Fundamental issue and Question before this Court is does one escape liability for defamation by putting the libel behind a prefix such as "I have been told that. . ." or "It is rumoured that . . .", and then asserting that it was true that one had been told or that it was in fact being rumored?

The Trial Court Judge, Douglas Baird in his ruling for Summary Judgment states :

Record (Vol.II, Page 167, Line 15-18):

THE COURT: Look. I am perfectly willing to accept and I'm sure that Dr. Orlick is, too, that he never made that statement. Okay. Let's just assume that it never happened. You want me to sign an order?

Record (Vol. II, Page 177, Line 17-25):

THE COURT: It's not difficult. It's impossible. The only way you would be able to prove she never said that would be to have someone who was with her for her entire relationship and know every word she spoke or who was present every time that she spoke with Dr. Orlick. I mean, it would be

impossible. It would be impossible. I just don't see it. ***I'm going to grant the summary judgment. I really think this has gone far enough.***

Petitioner has pointed out to the Trial Judge, The Florida Second District Court of Appeals, and the Florida Supreme Court that this is not the Law.

In *Layne v. Tribune Company, 146 So. 234 (Fla. 1933)* the Court stated:

In any event, the legal premise upon which the modern rule of actionable liability rests is, that a person who repeats a slander or libel is presumed by his reiteration of it, ***to indorse it and make it his own.***

Even in Jurisdictions outside the United States this principle is upheld as in *Lord Devlin in Lewis v. Daily Telegraph Ltd., [1963] 2 All E.R. 151 at 173:*

This answer is no. One cannot escape liability for defamation by putting the libel behind a prefix such as "I have been told that ..." or "It is rumoured that ...", and then asserting that it was true that one had been told or that it was in fact being rumoured.... For the purpose of the law of libel, the hearsay statement is the same as a direct statement.

As further argued to the Trial Judge to allow this would in fact legalize defamation as one simply would have to submit an affidavit that the Defamation was told to the person by one who is deceased to escape liability!

II. **Review Is Warranted Because The Court Below Denied Petitioner The Protection of Art. I, § IV, Of The Florida Constitution As Required By The Equal Protection Clause Of The XIV Amendment Of The US Constitution.**

In order to protect the right to free speech this Court established an almost insurmountable barrier for a publisher of a defamation to assume liability for his defamation in the case of public individuals, New York Times Co. v. Sullivan, *376 U.S. 254, 84 S. Ct. 710, 11 L.ed. 2d 686.* and a lesser standard for private individuals in Gertz, supra, i.e. the showing of Actual Malice defined as Publishing the defamatory statement knowing it is false or with reckless disregard whether is was true or false.

It is important that this Court clarify its position that Actual Malice as defined by this Court is in fact a restatement of the motive section of Art. I. § IV of the Florida Constitution:

> *If the matter charged as defamatory is true **and was published with good motives**, the party shall be acquitted or exonerated.*

On November 21, 2003 the Deposition of Respondent, Arnold H. Orlick, Record (Vol. I, Page 81, Line 2-12), was taken in which Respondent stated:

> *Q Did you discuss this statement with Mrs. Orlick?*
>
> *A No, I don't recall discussing it. It was such profanity in my mind, I'm embarrassed even to use those words. That's all I can say about that.*
>
> *Q And so you didn't discuss it with anyone else then either?*
>
> *A No.*

Q And you never confronted Barry about it?

A Why should I? I've spent about 45 minutes in 46 years with Barry Stern. So you can see Barry Stern isn't on my mind, period.

On April 1, 2003 Appellant files a brief in which he states on Page 18:

Publishing a Defamatory Statement with reckless disregard for whether it is True or False is defined by the U.S. Supreme Court as Malice.

Malice means that it was published either knowing that it was false or with reckless disregard as to whether is was true or false. New York Times Co. v. Sullivan, 376 U.S. 254, 84 S. Ct. 710, 11 L.ed. 2d 686.

Petitioner has pointed out these statements to the Trial Judge, The Florida Second District Court of Appeals, and the Florida Supreme Court and argued that these statements are sufficient for purposes of Summary Judgment to establish an inference of publishing the statement with reckless disregard whether it is true or false.

The Trial Court Judge, Douglas Baird in his ruling for Summary Judgment states :

Record (Vol. II, Page 176, Line 22-24

THE COURT: . . . .If there is no evidence that the statement made by Dr. Orlick was false, it can't be defamation.

On April 1, 2003 Appellant files a brief in which he states on Page 17-18:

Even if the Jury determined that Plaintiff had made the statement to his Mother, or could not determine this issue, Florida Law requires that Defendant still publish the statement with good Motive. Art. I, § IV, Fla. Const.

On May 27, 2003 Appellant files a reply brief in which he states on Page 12-13:

- - - - - in Lipsig v. Ramlawi, 760 So.2d 170, (Fla.App. 03/29/2000) the Florida Court of Appeals stated:

*[86] Moreover, **under Florida law**, truth is only a defense to defamation when the truth has been coupled **with good motive**. See Axelrod v. Califano, 357 So. 2d 1048, 1050 (Fla. 1st DCA 1978)(holding that "the truth of the publication is a good defense, assuming that it was made with good motives."). The law is clear that both truth and good motives are issues for the jury. See, e.g., Glickman, 454 So. 2d at 613; Drennen, 328 So. 2d at 55.*

The Respondent has admitted he can't recall discussing the statement with his wife and didn't discuss it with anyone else and then publishes the statement after eight years!

The Question of Motive is clearly for the Jury and denying Petitioner this right is a violation of the equal protection clause of the 14th Amendment of the US Constitution.

III. Review Is Warranted Because The Court Below Denied Petitioner A Jury Trial As Required By The VII Amendment Of The US Constitution For Damages That Exceed Twenty Dollars.

The Tort of Intentional Infliction of Emotional Damages has traditionally been difficult for the Courts of the United States due to the state of Medical Technology. Today there are drugs like Zoloft in which the symptoms of depression can be scientifically controlled. A signed affidavit of diagnosis by licensed physicians of Depression and treatment with Zoloft should be upheld by this Court as evidence of Emotional Damage and should classified this damage as Bodily Harm.

That on May 27, 2003 Appellant files a reply brief in which he states on Page 5:

> *In Lashley v. Bowman, 561 So.2d 406 (Fla. 5th DCA 1990) the Appellate court addresses the issues of bodily harm and the inference of extortion:*
>
> *[22] (1) One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress,* ***and if bodily harm to the other results from it, for such bodily harm.***

Petitioner has pointed out this Affidavit to the Trial Judge, The Second District Court of Appeals, and the Florida Supreme Court that bodily damage has occurred with regard to this incident. This Affidavit is sufficient for purposes of Summary Judgment to establish Emotional Damage and classify it as Bodily Harm.

Even without this evidence, for purposes of Summary Judgment Petitioner has pointed out that defamatory statements made to a six-year old regarding conduct of her mother has been upheld with respect to Emotional Damage. in *Korbin v. Berlin, 177 So. 2d 551, (Fla. 3th DCA 1965)*.

Even without this evidence, for purposes of Summary Judgment Petitioner has pointed out that conduct with respect to dead bodies has been upheld with respect to Emotional Damage in *Williams v. City of Minneola, 575 So. 2d 683 (Fla. 5th DCA 1991).*

Finally, the Supreme Court of Florida has stated in Axelrod v. Califano, *357 So. 2d 1048(Fla. 1st DCA 1978)* :

> ** * when a judge encounters doubt as to the existence or nonexistence of a genuine issue of fact the doubt should be resolved against the movant.'*

The use of Drugs as prescribed by a licensed Physician is clear evidence that Emotional Damage is also Bodily Injury and therefore denying Petitioner a Jury Trial is in violation of the 7th Amendment of the US Constitution.

CONCLUSION

The Petition for the Writ of Certiorari should be granted.

Respectfully submitted,

Barry J. Stern, Pro Se

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Indianapolis, IN 46278
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Fax. 317-872-1337

(2)

Supreme Court, U.S.
FILED

031664 MAY 10 2004

No.

IN THE

Supreme Court of the United States

BARRY J. STERN, *Petitioner*,
v.
ARNOLD H. ORLICK, *Respondent*

On Petition For A Writ Of Certiorari To The Supreme Court Of Florida

SUPPLEMENTAL APPENDIX

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NOT FINAL UNTIL TIME EXPIRES TO FILE
REHEARING MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

BARRY J. STERN,	)	
	)	
Appellant,	)	
	)	
v.	)	Case No. 2D03-585
	)	
ARNOLD H. ORLICK,	)	
	)	
Appellee,	)	
	)	

Opinion filed September 5, 2003.

Appeal from the Circuit Court for
Pinellas County; W. Douglas Baird, Judge.

Barry J. Stern, pro se.

Dale T. Golden and Michael G. Archibald
Of Marshall, Dennehey, Warner,
Coleman & Goggin, for Appellee.

PER CURIAM,

Affirmed.

SILBERMAN, COVINGTON, and KELLY, JJ., Concur.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

October 10, 2003

CASE NO.: 2D03-585
L.T.No.: 02-5280-CI

Barry J. Stern v. Arnold H. Orlick

Appellant/Petitioner(s), Appellee/Respondent(s)

BY ORDER OF THE COURT:

Appellant's motion for rehearing and/or certification is denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Barry J. Stern
Dale T. Golden, Esq
Karleen F. Deblaker, Clerk

bl

s/_____
James Birkhold
Clerk

SUPREME COURT OF FLORIDA

WEDNESDAY, DECEMBER 3, 2003

CASE NO.: SC03-2067
Lower Tribunal No.: 2D03-585

BARRY J. STERN vs. ARNOLD H. ORLICK

Appellant(s) Appellee(s)

It appearing to the Court that the Second District Court of Appeal did not declare invalid a state statute or a provision of the State Constitution, and that, therefore, this Court is without jurisdiction, this appeal is hereby dismissed subject to reinstatement if jurisdiction is established on proper motion filed within fifteen (15) days from the date of this order. See Art. V, §3(b)(1), Fla. Const.

A True Copy
Test:

s/_____
Thomas D. Hall
Clerk, Supreme Court

oh
Served:

BARRY J. STERN
DALE T. GOLDEN
HON. JAMES BIRKHOLD, CLERK
HON. W. DOUGLAS BAIRD, JUDGE
HON. KARLEEN F. DEBLAKER, CLERK

SUPREME COURT OF FLORIDA

MONDAY, FEBRUARY 16, 2004

CASE NO.: SC03-2067
Lower Tribunal No.: 2D03-585

BARRY J. STERN vs. ARNOLD H. ORLICK

Appellant(s) Appellee(s)

Petitioner's Motion to Reinstate Jurisdiction is hereby denied.

ANSTEAD, C.J., and WELLS, PARIENTE, CANTERO and BELL,JJ., concur.

A True Copy
Test:

s/_____
Thomas D. Hall
Clerk, Supreme Court

mc
Served:

BARRY J. STERN
DALE T. GOLDEN
HON. JAMES BIRKHOLD, CLERK
HON. W. DOUGLAS BAIRD, JUDGE
HON. KARLEEN F. DEBLAKER, CLERK